C. The Treatment of State Taxes on FCC Form 1220 Needs to be Corrected.

The calculations of federal and state taxes on FCC Form 1220 fail to account for the deductibility of state taxes for federal tax purposes (and also the deductibility in some states of federal taxes for state tax purposes). The form should be modified to reflect the approach taken in section A of Schedule G of FCC Form 1205, and all of the forms should be further modified to deal with cross-deductibility of federal taxes for state tax purposes.

X. THE COMMISSION SHOULD NOT RESTRICT THE USE OF PREVAILING COMPANY PRICING FOR AFFILIATE TRANSACTIONS.

The proposed affiliate transaction rules applicable to cable operators who either elect cost-of-service regulation or seek to adjust benchmark/price cap prices for affiliated programming costs unnecessarily limit the use of prevailing company pricing. These rules are taken from the proposed rules pending for telcos and are another example of the Commission's importation of telco regulation to cable without apparent consideration of the policy implications.

The interim affiliate transaction rules for cable, which permit the use of fair market value if the service or asset is offered to a "substantial number" of third parties, are more than adequate, because fair market tests exist for all substantial transactions to guard against manipulative pricing. The record in the cost-of-service proceeding demonstrates that "affiliate transactions in the cable industry primarily involve purchases from affiliated programmers who sell the same products to third parties."[72] Thus, the use of prevailing company pricing is a reasonably reliable measure of fair market value for the vast majority of transactions that occur between cable affiliates. Accordingly, the Commission should allow prevailing company pricing where the seller has sold the same kind of asset or service to third parties.[73]

By contrast, transactions between telco affiliates usually involve assets and services that are unique and highly customized. Network equipment sold between telco affiliates often is not available from independent third parties. Likewise, services transferred between telco affiliates are highly specialized and thus available from only a limited number of suppliers. And, even where ordinary inputs of a commodity nature

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[72] See Id. at para. 265 (footnote omitted).

[73] Like the development of the telco USOA, the history of the Commission's affiliate transaction rules is a lengthy one. In 1986, the Commission proposed rules to govern affiliate transactions between telcos and their nonregulated affiliates. Separation of costs of regulated telephone service from costs of nonregulated activities, Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies, to provide for nonregulated activities and to provide for transactions between telephone companies and their affiliates, CC Docket No. 86-11, Notice of Proposed Rulemaking 104 FCC 2d 59 (1986). The Commission adopted permanent rules a year later. Separation of Costs of Regulated Telephone Service From Costs of Non-Regulated Activities, CC Docket No. 86-111, Report and Order, 2 FCC Rcd 1298 (1987). Revisions and clarifications of these rules have been made over the years in cost allocation manual filings. After seven years of implementation, the Commission recently proposed to significantly revise the telco affiliate transaction rules. Amendment of Parts 32 and 64 of the Commission's Rules to Account for Transactions Between Carriers and Their NonRegulated Affiliates, CC Docket No. 93-251, Notice of Proposed Rulemaking, FCC 93-453 (released October 20, 1993).

are involved, telcos have structured these transactions in ways that do not readily permit market-based tests. Furthermore, there may, in fact, be no other purpose, other than to improperly cross subsidize, for telcos to purchase assets or services through affiliates instead of purchasing them more cheaply from a nonaffiliated entity.[74]

Consequently, telcos engaging in affiliate transactions often have few, if any, transactions to serve as a basis for evaluating market prices. Because telco-affiliated suppliers often deal exclusively with their telcos as their sole customer, there is no prevailing company pricing to be utilized. Discontinuing its use where the predominant purpose of the affiliate is to serve the carrier is thus reasonable.

On the other hand, cable affiliate transactions do not involve the transfer of customized or specialized assets and services. Virtually all affiliate transactions in the cable industry involve the purchase and sale of a highly competitive and widely available product -- programming.[75] Indeed, the Commission's program access rules are designed to make programming offered by vertically integrated satellite cable

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[74] See Id. at para. 43.

[75] Indeed, the Commission's program access rules are designed to make programming offered by vertically integrated satellite cable programming vendors more broadly available to multichannel distributors. See Implementation on Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992: Development of Competition and Diversity in Video Programming Distribution and Carriage, MM Docket No. 92-265, First Report and Order, FCC Rcd 3359 (1993).

programming vendors more broadly available to multichannel distributors. Based on the Commission's finding that affiliated programmers offer and sell their products to third parties,[76] the concerns with prevailing company pricing simply do not apply to cable. Unlike telco services and assets that are transferred to affiliates, the prevailing company price of cable programming accurately reflects its market value.

Moreover, the affiliate transaction rules for telephony are the result of the recognition of the "faulty incentives" created by traditional rate of return regulation[77]. One of the established consequences of traditional telco regulation is an incentive to integrate operations vertically independent of efficiency. A rate of return regulated firm has an incentive to diversify into adjacent markets in order to misallocate costs to regulated operators. The affiliate transaction rules were devised to monitor these type of abuses.

No such history exists for the cable industry. Vertical integration in the cable industry grew out of efficiency concerns, driven exclusively by market incentives free of regulatory distortions. Most specifically, as the Commission has recognized, cable companies have integrated into programming as a

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[76] Cost-of-Service Order at para. 265.

[77] Amendment of Parts 32 and 64 of the Commission's Rules to Account for Transactions between Carriers and their Nonregulated Affiliates, CC Docket No. 93-251, Notice of Proposed Rulemaking at para. 42, FCC 93-453 (released October 20, 1993).

means of reducing the risks of launching new services.[78] Vertical integration in the cable industry is thus free of the regulatory considerations which drove the adoption of affiliate transaction rules for telephone companies.

Even assuming that there are legitimate concerns with prevailing company pricing, the 75 percent "bright line" test is too high. For the largest MSOs, the degree of vertical integration in the industry renders this threshold unworkably burdensome. For these MSOs, a large number of programming transactions occur between affiliated entities. The effect on programmers is equally adverse. Because the prevailing company pricing rule is applied in a cumulative fashion, it will severely restrict the ability of program suppliers that are affiliated with many MSOs to provide programming to these MSOs without extensive regulatory obligations.[79] The proposed rule also would operate to discourage multiple MSO investment in a program service and thereby would damage a mechanism that has produced numerous new program services.

Finally, the proposal to curtail the use of prevailing company pricing is inconsistent with the Commission's policy of

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[78] Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992: Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-Trafficking Provision, Notice of Proposed Rulemaking and Notice of Inquiry at Para. 45, FCC 92-542 (released December 28, 1992).

[79] Furthermore, a "bright line" test is inherently arbitrary. There is no basis for characterizing transactions which occupy less than 75% of an entity's output as something short of "predominant."

encouraging the development of programming. Programming costs are treated as exogenous in order to "assure programmers continued ability to develop, and cable operators ability to purchase programming."[80] Such treatment is necessary given the "greater importance at this initial stage of rate regulation to assuring the continued growth of programming."[81]

In essence, the Commission has acknowledged the power of the market to maintain competitive pricing in cable programming. Restricting the use of prevailing company pricing for programming will undo these efforts to facilitate and encourage the development of programming, and will create needless burdens for operators and programmers.

XI. A PRODUCTIVITY OFFSET SHOULD NOT BE APPLIED TO CABLE UNDER EITHER BENCHMARK OR COST-OF-SERVICE REGULATION.

The Commission should not apply a productivity offset to either benchmark or cost-of-service regulated cable systems. In stark contrast to the record in the similar telephone company proceedings, no evidence supports the Commission's proposal to impose a productivity offset.

The Commission's proposal to adopt a two percent productivity offset for cable is based on the comments filed by one party, the Staff of the New Jersey Board of Regulatory

[80] Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation MM Docket No. 92-266 Report and Order and Further Notice of Proposed Rulemaking at para. 251, 8 FCC rcd 5631 (1993).

[81] Id.

Commissioners ("New Jersey Staff"). New Jersey Staff states in its comments that the GNP-PI should be reduced by a "static productivity offset, such as two percent . . . . to reflect the known benefits of technology improvement occurring in the cable industry."[82] No other quantitative analyses were provided to support a two percent productivity offset for cable. Apparently, "regulatory parity" underlies this proposal as well.

It is ironic that the Commission would propose a productivity offset in connection with the introduction of price regulation -- including rate of return regulation -- into an industry. Generally, productivity offsets have been deemed necessary where cost-of-service regulation is being removed or relaxed, due to the elimination of the inefficiencies caused by such regulation. It is unreasonable to presume productivity gains from the imposition of a regulatory scheme known to produce inefficiencies and reduced productivity.

In the LEC Price Cap proceeding, the record was replete with various productivity measures demonstrating telco enjoyment of productivity gains not adequately taken into account by the GNP-PI.[83] The Commission's proposal to adopt a productivity offset was thus based on an extensive record that included a detailed

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[82] Staff Comments of the Board of Regulatory Commissioners, MM Docket No. 93-215, at 11, filed August 25, 1993.

[83] Policy and Rules concerning Rates for Dominant Carriers, CC Docket No. 87-313, Supplemental Notice of Proposed Rulemaking, 5 FCC Rcd 2178, 2211 (1990).

analysis of numerous studies undertaken by the Commission and industry on telephone company productivity.

Prior to proposing a productivity offset for the telephone industry, the Commission conducted its own long- and short-term studies and thoroughly reviewed and analyzed two AT&T pre-divestiture studies, two independent studies, and three corroborative findings.[84] The two studies performed by the Commission included a short-term study of productivity for interstate switched access since divestiture and a long-term study of the total telephone industry between 1928 and 1989.[85] By the time the Commission had issued its Second Further Notice of Proposed Rulemaking, it had:

> amassed a great deal of information about productivity of the telecommunications industry. Long-term productivity measures consistently demonstrated a productivity differential of between 2 and 3 percent. Furthermore, the data for the most part tended to show increased productivity in more recent years.[86]

The Commission further noted that its proposed productivity offset of 2.5 percent:

> was not a hastily made decision or a decision that was made without documented support. Indeed, as the record exhaustively details, the Commission carefully considered various means of measuring productivity and only after examining them closely, with full participation from interested parties, was the proposed

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[84] Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313 Further Notice of Proposed Rulemaking, 3 FCC Rcd 3195, 3401-3408 (1988).

[85] The staff's long-term study indicated that a 2.1% productivity factor would have been appropriate, while the short-term study suggested a 3.5% offset for the industry.

[86] 5 FCC Rcd 2178, 2217, supra.

> offset selected from available evidence. While no means infallible, we tentatively conclude that the 2.5 percent offset accurately reflects the available evidence of LEC productivity. With the release of the two staff studies of productivity in this Supplemental Notice, we continue to pursue additional evidence that will assist us in assessing our tentative judgement.[87]

No comparable analysis has been undertaken with respect to the cable industry that even suggests that cable productivity is not already reflected in the GNP-PI. But even if the Commission had historical data demonstrating unusually high productivity gains, that history would not suffice to establish a productivity offset to predict current or anticipated gains. Based on the lack of record support, there simply is no basis for proposing, let alone administering, a productivity offset for cable on a nationwide basis at this time.

Moreover, in declining to apply a productivity offset to mid-size and small LECs, the Commission noted that "the independents are too diverse in terms of geography, business organization, historical growth rate, customer and resource base, and much else, to . . . predict accurately the future productivity" of these LECs as a class.[88]

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[87] Id. at 2227-2228. After reviewing all of the evidence, the Commission adopted a slightly higher productivity offset than it had originally proposed. In so doing, it noted that it had "once again thoroughly examined the evidence and studies of record. This analysis involves extremely complex and technical issues of data accuracy, assumptions, necessary adjustments and statistical methodology." Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6789 (1990) (footnote omitted).

[88] Id. at 6800.

> These points underscore the difficulty of discerning a uniform pattern of small and mid-size LEC productivity from this record. That is, since the foundations of productivity vary from company to company, and since the variation in terms of size, resource base, and geography among independents is so wide, the pitfalls associated with choosing one mandatory productivity number to apply to all such companies are manifest.[89]

Certainly, the heterogeneity of the cable industry makes it equally, if not more, impossible to discern a pattern of productivity.

XII. THE COMMISSION SHOULD EXPEDITIOUSLY IMPLEMENT ITS PLAN FOR ABBREVIATED COST-OF-SERVICE SHOWINGS FOR NETWORK UPGRADES.

In the Further Notice, the Commission decided to adopt an abbreviated cost-of-service showing for "significant upgrades" of cable system plant.[90] The Commission delegated authority to the Cable Services Bureau to develop the appropriate forms for these abbreviated showings.[91] TCI strongly endorses this decision and urges the Commission to expedite the process of developing the necessary forms.

It is clear that the Administration, Congress, and the Commission all support rapid deployment of the National Information Infrastructure ("NII"). The Commission's decision recognizes the need for appropriate incentives and clear procedures under which cable operators may make the "added

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89 Id.

90 Further Notice at paras. 285-291.

91 Id. at para. 291.

capital investment, such as expansion of bandwidth capacity and conversion to fiber optics," necessary to realize the NII.[92]

TCI believes that the NII will result in numerous important benefits. First, the NII will benefit all cable customers (customers of both regulated and unregulated services) by improving the quality and reliability of cable service, and by increasing bandwidth and thereby program choice. Second, the NII will make possible the development and deployment of broadband, interactive services. Finally, as Vice President Gore repeatedly has said, the NII will have substantial positive externalites, including the generation of significant economic activity that will boost the overall economy.

TCI believes the Commission's decision to adopt a streamlined cost-of-service showing for significant system upgrades is critical to the accelerated development of the NII. Accordingly, TCI requests that the Commission expeditiously clarify the procedures and forms attendant to its decision.

CONCLUSION

For the foregoing reasons, the Commission should not adopt as permanent the interim cost-of-service rules set forth in the notice, and should adopt neither a uniform system of accounts for cable nor a productivity offset. Rather, backstop regulation should proceed on a case-by-case basis consistent with its intended function. To reduce the burdens on cable operators,

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[92] Id. at para. 287.

franchising authorities, and the FCC, the Commission should configure its regulations around the operators' existing audited books and records, without presumptive disallowances, complex forms, or costly accounting data. The Commission should provide for abbreviated cost-of-service showings for network upgrades.

Respectfully submitted,

TELE-COMMUNICATIONS, INC.

By: ______________________
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Its Attorneys

1 July 1994

AFFIDAVIT OF M. LAVOY ROBISON

INTRODUCTION

My name is M. LaVoy Robison, a Partner in KPMG Peat Marwick (KPMG). My business address is 2300 Arco Tower, 707 Seventeenth Street, Denver, Colorado, 80202. KPMG is a worldwide accounting, tax and consulting organization. KPMG maintains an Information & Communications practice which includes cable television companies. I am the former Director of KPMG's National Cable Television Practice and the current the Professional Practice Partner of the Denver office and an SEC Reviewing Partner. My professional experience has included auditing cable television companies, consulting on public offerings of cable television companies, and providing testimony at various franchise hearings since 1966. In addition, I have served as the client service partner and audit engagement partner on Tele-Communications, Inc. (TCI) since 1971.

We are providing this affidavit at the request of Willkie Farr & Gallagher the attorneys representing TCI concerning certain issues in the Federal Communications Commission (FCC)'s Proposed Rulemaking on Cost of Service. I will address the proposed Uniform System of Accounts (USOA) for cable television companies and the proposed limitation on recovery of start-up losses.

Uniform System of Accounts

The FCC's proposed USOA attempts to use a slightly modified version of the USOA for Class B telephone companies and applies this to the cable television industry. The current version of the USOA is not well defined and is extremely confusing for cable television operators to apply. For example, the proposed USOA assumes cable television operators have recorded certain costs associated with cable television plant, on a historical basis, in the accounts which are being proposed by the FCC. In order to apply the proposed USOA, cable operators may be required to incur very significant costs associated with going back in history to original invoices and recording the costs from these invoices in the accounts proposed by the FCC.

In addition, the FCC has assumed that the proposed rules would become generally accepted accounting principles (GAAP) for cable television companies. The Financial Accounting Standards Board (FASB) governs what is GAAP for specialized industries such as cable television versus the USOA proposed to be adopted by the FCC. If any conflicts between GAAP and the USOA exist for financial reporting purposes GAAP would be applied not the USOA. For example the Allowance for Funds Used During Construction (AFUDC); which if the FCC allows the capitalization of estimated costs of borrowed and equity funds as part of the related construction project this would be in conflict with GAAP. Statement of Financial Accounting Standards No. 34, *Capitalization* *of Interest Cost,* (Statement 34) provides the rules to be used for the capitalization of interest costs incurred during construction of an asset. Statement 34 only allows the capitalization of interest on debt of the entity and does not allow the calculation to include an assumed rate for the cost of equity. In this instance, under current GAAP, the USOA proposed accounting requirements would not be considered to be GAAP unless the FCC approaches the FASB on this issue and the FASB concludes this is appropriate treatment.

The burden of maintaining accounting records in accordance with the USOA and GAAP and the requirements of the Securities and Exchange Commission rules and regulations could be very costly to TCI and may require significant changes in software and accounting policies and procedures.

In addition, Statement of Financial Accounting Standards No. 71, *Accounting for the Effects of Certain Types of Regulation,* (Statement 71) addresses the accounting for certain companies which are subject to regulation with rates to be set at levels intended to recover the estimated cost of providing regulated services. This Statement would not necessarily be applied to TCI as the cable systems electing the cost of service methodology are not material to TCI on a consolidated basis as further discussed below.

Limitation of Start-Up Losses

The FASB issued Statement of Financial Accounting Standards No. 51, *Financial Reporting by Cable Television Companies,* (Statement 51) in November 1981 as part of the FASB's project to extract the specialized accounting and reporting principles and practices from the American Institute of Certified Public Accountants Statements of Position (SOPs) and Guides on accounting and auditing matters. Statement 51 was extracted from SOP 79-2, *Accounting by Cable Television Companies,* which was the only cable television related authoritative accounting literature prior to the issuance of Statement 51.

A major provision of Statement 51 relates to prematurity period costs which would be deferred. The costs were limited to only programming costs and other system costs that are incurred in anticipation of servicing a fully operating system and that such costs will not vary significantly regardless of the number of subscribers (i.e.; fixed in nature) and will be allocated between current and future periods. In addition, depreciation expense associated with capitalized fixed assets during the prematurity period was to be calculated based upon the estimated useful lives of the assets using a straight-line method and applying a fraction, based upon anticipated subscribers and subscribers added each month, to this expense.

The FCC also assumes that the prematurity period will be limited to a two year period. The guidance in Statement 51 ¶ 4 states "a longer period may be reasonably be justified only in major urban markets." Based upon this guidance we suggest the FCC should modify its position to conform to Statement 51.

Costs associated with subscriber related costs and general and administrative expenses were required to be expensed in the period incurred.

The programming expenses for most cable television operators were calculated on a per subscriber basis and thus, are not fixed in nature. Therefore, deferral of these costs was not allowed by Statement 51.

The primary expenses of a cable television company were and continue to be programming costs and employees' salaries and benefits. Thus, the FCC's presumption in the Notice of Proposed Rule Making for cost of service that Statement 51 addressed the cable system operators concerns of recovering start-up losses and receiving a rate of return on start-up losses is not correct. The individuals who were responsible for issuing Statement 51 did not consider the question of rate of return and were only concerned that the accounting for cable television companies follow fairly traditional accounting for expenses that are considered as period costs or costs which may have a future benefit. Conservative accounting has always been a major factor in setting accounting principles.

At the time of the release of Statement 51, TCI determined that the impact of adopting the Statement would not have a material effect on the consolidated financial statements of TCI and that their accounting was even more conservative. As such, TCI did not apply the provisions of Statement 51. TCI at this time was not active in acquiring new franchises which would require the initial construction of these franchise areas. Many other cable system operators also elected not to apply Statement 51 as the effects were not material to the industry as a whole.

During the mid 1980's most of the large metropolitan areas' franchises were granted to cable system operators and the construction of these systems began at this time with completion during 1988 and 1989. TCI again determined that the provisions of Statement 51 would not have a material impact on TCI on a consolidated basis. TCI (excluding United Cable Television Corporation which was acquired in 1989) constructed cable systems in major metropolitan areas during this period.

At this time, cable television rates were deregulated and TCI did not anticipate reregulation of the industry that would cause TCI to determine its rates for these systems using a cost of service methodology.

TCI's decision not to adopt the provisions of Statement 51 due to its immaterial effect on its consolidated financial statements and its conservatism should not preclude TCI from adjusting its historical financial statements for individual systems filing for cost of service. TCI should be allowed to reflect the provisions of Statement 51 for purposes of calculating the rate base and depreciation expense on the FCC's Form 1220. I believe TCI, for GAAP purposes, should not be required to restate its historical consolidated financial statements as the effects of adopting the provisions of Statement 51 would provide no beneficial purpose to the users or readers of those consolidated financial statements and could be confusing to TCI's stockholders.

M. LaVoy Robison, CPA

State of Coloardo)
) ss:
County of Denver)

Subscribed and sworn to before me this 30th day of June, 1994.

Notary Public

My commission expires the 25th day of October, 1995.

AFFIDAVIT OF RICHARD D. TREICH

INTRODUCTION

My name is Richard D. Treich. I am a Principal in KPMG Peat Marwick (KPMG). My business address is Suite 300, 200 Crescent Court, Dallas, Texas, 75201. KPMG is a worldwide accounting, tax and consulting organization. KPMG maintains a Cable Television consulting practice, for which I am responsible, that provides consulting assistance to cable television operators in areas such as regulatory compliance. My professional experience has included revenue requirements, cost-of-service and rate design analyses for cable television, electric, natural gas, water and telecommunications organizations. These assignments have been performed for clients in twenty-one different states. I have presented testimony in over fifty different regulatory applications and filings in nine states, the District of Columbia, the FCC, the FERC and in Canada including two cost-of-service applications for a cable company during my approximate twenty year professional career. Attached is my professional resume.

KPMG was asked by Tele-Communications, Inc. through its attorneys, Willkie Farr & Gallagher, to prepare an affidavit describing inconsistencies within the FCC's interim cost-of-service rules regarding the inclusion of income taxes in cost-of-service filings that we discovered in the course of preparing cost-of-service filings for cable systems. I will address three issues: 1) the inclusion of income taxes for non "C" Corporations; 2) the synchronization of interest expense with rate base for the purpose of the income tax calculation; and 3) the treatment of state tax deductibility for federal tax purposes on FCC Form 1220.

Non "C" Corporation Organizations

The interim cost-of-service rules and the FCC Form 1220 include a separate income tax calculation for non "C" Corporations. Under these rules, the FCC requires the cable operator to reduce the income tax factor by the net distributions and contributions from the partnership or "S"

Corporation. The interim rules have not provided for the possibility that a partnership could be owned by a "C" Corporation. For example, if a cable operator is organized as a partnership in which the partners are "C" Corporations, all income earned by the partners is included as taxable income on the partners' "C" Corporation income tax returns. Under this situation, the income earned by the partnership would be taxed no differently than income earned by a "C" Corporation. The interim rules need to be modified to account for non "C" Corporations where the owners are "C" Corporations. Without this modification, the non "C" Corporations will not be afforded a fair and proper allowance for income taxes.

Interest Synchronization

The interim cost-of-service rules have not provided for the cable operator to synchronize its interest expense used for tax calculation purposes with the cable operator's debt cost used in the rate of return calculation. Typically, the interest expense used for income tax purposes under cost-of-service regulation is synchronized with the implicit interest expense associated with the rate base under cost-of-service regulation. The synchronization approach used multiplies the weighted cost of debt times the rate base to develop the implicit interest expense associated with the regulated rate base. For example, assuming a regulated rate base of $1,000,000, an 8.5 percent debt cost and a 40 percent debt capitalization, the interest expense for tax purposes would be $1,000,000 times 8.5 percent times 40 percent, or $34,000. Including the actual booked interest expense as proposed by the FCC in the interim rules would mismatch the rate of return calculation and the income tax calculation. The synchronization of the interest expense with the rate of return calculation allows the cable operator to only recover an income tax gross-up on the equity return component of the overall rate of return.

FCC Form 1220

The FCC Form 1220 proposed for cost-of-service presentations does not allow the cable operator to consider the deductibility of state income taxes for federal tax purposes. The Form simply adds the federal tax rate with the state tax rate to create a combined federal and state tax rate. The Form needs to be modified similar to section G of Schedule A of FCC Form 1205 in order to reflect this state tax deductibility. Further, the FCC needs to allow for the possibility that the state income taxes may allow for the deductibility of federal income taxes in addition to the typical deductibility of state taxes for federal income taxes.

Richard D. Treich

State of Colorado)
) ss:
County of Arapahoe)

Subscribed and sworn to before me this 30th day of June, 1994.

Patricia P. Watson
Notary Public

My commission expires the 4th day of December, 1997.

RICHARD D. TREICH
KPMG Peat Marwick, National Cable Television Consulting
Principal

Mr. Treich consults with cable television, telecommunications, electric, gas, water and wastewater organizations on engagements related to strategic and competitive regulatory analyses. These engagements include competitive assessments; regulatory studies like cost-of-service, rate design, revenue requirements, and working capital; marketing strategies related to incentive rates; operations management; merger and acquisition investigations; financial analyses like sale/leaseback transactions; utility bankruptcy proceedings; and cogeneration analyses. Many of these engagements also include the presentation of direct and rebuttal testimony before regulatory commissions and courts. Mr. Treich is responsible for the Firm's U.S. practice in this market segment including, previously, the utility consulting practice.

Testimony Experience
Presented testimony in over forty different proceedings before regulatory bodies in: Arizona, Canada, District of Columbia, FCC, FERC, Illinois, Kansas, Louisiana, Michigan, North Dakota, New Mexico and Texas.

Articles
Co-authored the chapter on "Retail Gas Cost Allocation Methods" of the American Gas Association <u>Gas Rate Fundamental</u> textbook.

Speeches

- Presented cost-of-service issues and trends for cable operators at the California Cable Television Association's Western Show.
- Presented the cost allocation section of the <u>Gas Rate Fundamentals Seminar</u> and "Current Issues in Gas Ratemaking" at the <u>Senior Gas Rate Analysts Seminar</u> for the American Gas Association.
- Moderated and assisted with the development of the annual University of Texas at Dallas Public Utility Conference for over five years.
- Instructed at utility training courses for KPMG Peat Marwick and the University of Texas at Austin.

Background
B.S. in Finance and Management Science *Susquehanna University*
Before joining KPMG Peat Marwick, Mr. Treich was the Director, Utility Regulatory Advisory Services Group of Coopers and Lybrand and Manager, Client Services of Ebasco Business Consulting Company. He is a member of the Kappa Mu Epsilon Honorary Mathematics Fraternity.